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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,303	01/02/2002	Charles F. Butler	Butler *6	6805

7590

05/05/2004

James D. Hall
Botkin & Hall, LLP
Suite 400
105 East Jefferson Blvd.
South Bend, IN 46601

EXAMINER

RICHMAN, GLENN E

ART UNIT	PAPER NUMBER
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3764

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 10/039,303
Filing Date: January 02, 2002
Appellant(s): BUTLER, CHARLES F.

MAILED
MAY 05 2004
GROUP 3700

James Hall
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/8/03.

(1) Real Party in Interest

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-8 are rejected under 35 U.S.C. 112 second paragraph. This rejection is set forth in prior Office Action, Paper No. 9.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 9.

Claims 4 and 5 are rejected under 35 U.S.C. 103(b). This rejection is set forth in prior Office Action, Paper No. 9.

(11) Response to Argument

1. At least two vibrating elements or transducers are required in Murtonen, thus Murtonen can not practice the invention of the application which requires only one transducer to effectively operate as claimed by "a minimum of one transducer".
2. Frequency in Murtonen is not continuously varied.
3. With regards to claims 7 and 8, no reference cited on record suggests the use of multiple scanned signals at different areas of the body.
4. Skille's individual discreet frequencies are used with no intervening frequencies being utilized, with a six minute duration or pause between frequencies which is not a scanning movement or a continuous frequency variation.
5. Murtonen does not use zero decibels.

As to 1. above, it is clearly claimed "a minimum of one transducer". The examiner is unclear how that can mean anything but one or "more than one" transducer.

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final* The amendment after final rejection filed on 12/11/03 has been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-8 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,113,852	MURTONEN	5-1992
5,101,810	SKILLE	4-1992

As to 2. above, Murtonen clearly discloses varying the frequency, see col. 2, lines 29-51.

As to 3. above, Murtonen discloses a repeated rotary effect advancing in a wavelike manner, col. 2, lines 29-51, which reads on the claimed "scanned signals at different areas of the body.

As to 4. above, Skille discloses the a frequency range from 30-120hz, which is further modulated as a function of the music being played, which reads on the scanning movement and frequency variations claimed.

As to 5. above, given that no criticality is disclosed, and the fact that the frequency ranges claimed and disclosed by Murtonen, it would have been an obvious design choice for Murtonen's range to include zero Clap, 227 USPQ at 973.
For the above reasons, it is believed that the rejections should be sustained.

 Respectfully submitted,

Glenn Richman
Primary Examiner
Art Unit 3764

May 30, 2004

Conferees

James D. Hall
Botkin & Hall, LLP
Suite 400
105 East Jefferson Blvd.
South Bend, IN 46601